

Emergency Powers Legislative Testimony  
Mackinac Center for Public Policy  
Michael Van Beek  
6/14/2022

Good afternoon, committee members. My name is Michael Van Beek, and I'm the director of research at the Mackinac Center for Public Policy. I'm here today to support and explain the origin of these 31 bills.

I became interested in emergency powers when the state used them in unprecedented ways in 2020. Regardless of whether they agreed or disagreed with the governor's orders, most people did not know these powers even existed, and a controversy immediately arose regarding the legality of these state actions. As a result, Michigan residents were subjected to months of constantly shifting novel laws, causing much confusion. This package of bills aims to prevent this type of legal uncertainty in case of future emergencies.

These bills originated from research I did on instances where a Michigan statute empowers the executive branch in times of emergency to unilaterally create mandates and rules that have the force of law. There are more than 30 such grants of power. They address a variety of issues, including plant diseases, Medicaid payments to medical providers, dry cleaning, mobile home licensing, adulterated food products, metal and coal mining, and much more.

The design of these statutes varies in significant ways. Some clearly specify under what circumstances they may be used, what type of actions may be taken and for how long these powers may last. Others are much less clear and provide virtually no guidance on how they should be used.

By comparing and analyzing these existing statutes, and informed by the Michigan Supreme Court's decision concerning Gov. Whitmer's use of emergency powers, I identified four essential elements of good emergency power laws: 1) a trigger, 2) a scope of authority, 3) a durational limit and 4) procedural requirements.

A trigger describes the conditions that must be met before these powers can be used: an imminent danger at a workplace or a newly discovered harmful substance, for example. A scope of authority specifies the actions that the state may take, such as compelling people to vacate a dangerous area or requiring a business to cease certain operations. A durational limit states how long these powers and actions may last. Finally, procedural requirements constrain the exercise of unilateral authority — requiring the executive branch to report or involve other branches of government in the process of exercising these powers, for example.

The proposed changes in these 31 bills would create consistency across state statute. The most common fix is to add a durational limit and procedural requirements, such as legislative reporting. These bills aim to reduce the legal controversy that might result from use of these powers in the future.

In addition to these reforms, some bills in this package repeal existing emergency powers currently in statute. It was discovered that many of these laws are antiquated or duplicative. For instance, some emergency powers regarding insurance and banking were created during the Great Depression and are incompatible with modern practice and with the modern regulatory and legal environment. Other

statutes grant powers to departments that they already possess via other laws. For most of these laws, there is no record of them ever being used. Repealing these statutes is an act of good governance, cleaning up Michigan law and reducing the chance that one of these powers is misused.

Emergency powers are important and necessary. But they do need guardrails, especially considering that they would be unconstitutional without the emergency conditions. This package of bills would make Michigan's emergency powers more consistent and clearer, helping prevent misuse and legal uncertainty about their application.

Thank you for your attention to this issue, and I'm happy to take any questions that you might have.



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

June 1, 2022

VIA EMAIL

The Honorable Julie Alexander  
State Representative  
State Capitol  
P.O. Box 30014  
Lansing, Michigan 48909-7514

Dear Representative Alexander:

Thank you for your recent message requesting information about the emergency authorities that fall under the jurisdiction of the Department of Environment, Great Lakes, and Energy (EGLE) per the following sections of Michigan law:

- **MCL 324.62507.** Issuance of emergency orders pertaining to mineral wells.
- **MCL 324.63513.** Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices.
- **MCL 324.11519.** Summary suspension of a permit or license for solid waste management.

Specifically, you requested information about “how the statutes have been used in the past, including: (1) an overview of when the power has been exercised, (2) a summary of the inciting emergency circumstances for past uses of the power, and (3) a description of the orders and actions executed under the emergency authority.”

EGLE's Oil, Gas, and Minerals Division oversees the first two sections of Michigan law listed above, and EGLE's Materials Management Division oversees the third. I asked the directors of those two divisions to provide responses to your queries related to the sections under their purview. In the case of each of the three sections, EGLE is not aware and has no record of exercising the relevant emergency authorities at any time in the past.

If you and/or a member of your team would like to discuss this matter further—including how our division leaders view these statutes in the context of EGLE's mission to protect Michigan's environment and public health—we would welcome the opportunity to schedule a meeting with you at your convenience.



Again, thank you for engaging EGLE and for your service to the State of Michigan and the residents of your district.

Sincerely,



Liesl Eichler Clark  
Director  
517-284-6712

cc: Aaron B. Keatley, Chief Deputy Director, EGLE  
Travis Boeskool, Legislative Liaison, EGLE  
Jessica Isler, Legislative Analyst, EGLE  
Elizabeth M. Browne, EGLE  
Adam Wygant, EGLE





GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
LANSING

ANITA G. FOX  
DIRECTOR

June 3, 2022

Representative Julie Alexander  
State Representative  
64<sup>th</sup> District

VIA E-MAIL: [JulieAlexander@house.mi.gov](mailto:JulieAlexander@house.mi.gov);  
[VVail-Shirey@house.mi.gov](mailto:VVail-Shirey@house.mi.gov)

Re: DIFS' Emergency Powers

Dear Representative Alexander:

In a letter dated May 23, 2022, you asked the Department of Insurance and Financial Services (DIFS) to provide information related to DIFS' use of emergency powers within its regulatory purview. Specifically, you asked for information related to the Emergency Insurance Legislation Act (MCL 550.1 et seq.), the Suspension of Business of Banks and Savings And Loan Associations Act (MCL 487.941 et seq.), and the Debt Management Act (MCL 451.419 et seq.).

After reviewing each of these Acts, and consulting with relevant staff responsible for overseeing each of these statutes, DIFS has no record or knowledge of exercising its regulatory powers afforded by these Acts. However, it should be noted that bank CEOs have exercised the powers afforded by the Suspension of Business of Banks and Savings and Loan Associations Act on multiple occasions for various types of emergencies.

As always, if you have questions or would like to discuss these Acts further, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Anita G. Fox".

Anita G. Fox, Director  
Michigan Department of Insurance and Financial Services







GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

June 3, 2022

The Honorable Julie Alexander  
State Representative, 64<sup>th</sup> District  
State Capitol  
P.O. Box 30014  
Lansing, MI 48909-7514

**RE: MCL 125.2343a**

Dear Representative Alexander:

In response to your letter received on May 23, 2022, Director Hawks has entrusted me to respond to your questions regarding summary suspensions of a mobile home park license.

MLC 125.2443a reads as follows:

*“Summary suspension of license. If the department finds that the health, safety, or welfare requires emergency action, and incorporates that finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.”*

Based on available institutional knowledge within the last 19 years, there has only been one circumstance where it was determined that this level of action was necessary. The one occasion this provision necessitated enforcement was in 2014 against a mobile home park known as “Life O’Riley Mobile Home Park”, which was located in Ingham County. In February 2014, BCC received a copy of a Notice of Condemnation Order from Ingham County Health Department – Bureau of Environmental Health, outlining no less than 16 health & safety violations.

Sincerely,

**Keith E. Lambert**  
Bureau of Construction Codes  
Department of Licensing and Regulatory Affairs



Representative Alexander,

I've checked with both our Wildlife Division and Fisheries Division regarding your request. Wildlife Division was not able to find any use of 324.41103 within the last decade, and they would be surprised if it was used much, if at all, prior to that. Fisheries division has only used 324.41103 once in the last 20 years. The attached document outlines those circumstances.

Please feel free to reach out if you need any clarification.

Thank you,  
Taylor

Taylor Ridderbusch  
Legislative Liaison | Legislative and Legal Affairs Office  
Department of Natural Resources  
c 517.281.1437 | [ridderbuscht@michigan.gov](mailto:ridderbuscht@michigan.gov)  
[Michigan.gov/DNR](https://Michigan.gov/DNR)

